IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3455 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.Madhav J. Jamdar, for the Petitioners
Mr. R.R. Salvi, for Respondent Nos. 1 and 2.
Mr. A.H. Palekar, AGP for Respondent Nos.3 to 5.

CORAM : S.A.BOBDE, J.
DATED : 29TH JUNE, 2005

P.C.

. Rule, returnable forthwith. Heard by consent.

2. The petitioners have challenged the order of the Charity Commissioner granting permission to sue them under Section 51 of the Bombay Public Trust Act. Mr. Jamdar, learned Counsel for the petitioners submitted and in my view rightly that the Assistant Charity Commissioner, Sindudurg, has not recorded any finding that there is a prima facie case against the present petitioners. A perusal of the impugned order does not show any finding to that effect. Such a finding must be recorded by the Charity Commissioner as required by Section 51 of the Bombay Public Trust Act. The said Section to the extent it is

relevant reads as under:-

> **"51. Consent of Charity Commissioner for Institution of suit.**
>
> (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he may within a period of six months from the date on which the application is made, grant or refuse his consent to the isntitution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal."

The Section clearly contemplates the formation of an opinion that the Applicants have a prima facie case to sue. The opinion, if formed, should be recorded

in the order after hearing the parties and making an enquiry. Being a quasi judicial order it must also set out the reasons. As the provisions of the Section have not been complied with the impugned order is hereby set aside. Rule made absolute in the above terms. The matter is remanded back to the Assistant Charity Commissioner, Sindhudurg Region, Sindhudurg for fresh decision under Section 51 of the Bombay Public Trust Act. The Assistant Charity Commissioner to take decision within a period of four weeks from the parties appearing before it. The parties are directed to appear on 18th July, 2005. In the meanwhile the Trust Suit No.2 of 2004 filed in pursuance of the impugned permission shall stand stayed.

Sd/-

(S.A. BOBDE, J.)